

CHAPTER 252. AGENCY RELATIONSHIPS WITH ASSOCIATIONS OTHER THAN LABOR ORGANIZATIONS AND ASSOCIATIONS OF SUPERVISORS AND MANAGEMENT OFFICIALS.

1-1 Purpose and Coverage

a. The Federal Labor Relations program, established under Executive Order 11491, as amended, provides an orderly system governing agency relationships with labor organizations that qualify for exclusive recognition or national consultation rights under the Executive Order. The Executive Order confers certain obligations on agencies and certain exclusive rights on a labor organization qualified under the Order to deal with an agency concerning grievances, personnel policies and practices, or other matters affecting the working conditions of employees. Commission guidance to agencies on dealing with labor organizations is included in FPM Chapter 711 and FPM Supplements 711-1 and 711-2.

b. Associations of management officials and supervisors may not be accorded recognition as labor organizations except as provided in subsection 24(2) of the Executive Order. However, each agency is expected to establish a system of intramanagement communication and consultation with its supervisors and associations of supervisors. FPM Chapter 251 contains guidelines to agencies on establishment of such systems of intramanagement communication and consultation.

c. The President's Task Force on Employee-Management Relations in the Federal Service in its report of November 30, 1961, stated the policy on agency relationships with veterans organizations under Executive Order 10988, as follows:

"The recognition of employee organizations should not affect the special relationship of veterans organizations with Government agencies."

"For many years, veterans organizations have enjoyed a special relationship with Government agencies. Congress has granted special rights and privileges to Government employees who are veterans. Over the years, veterans organizations have been active on behalf of their members in exercising these rights and privileges. The Task Force feels that there is no conflict between such activities of veterans organizations on behalf of their members and the work of regular employee organizations. The development of more formal employee management relations should not be permitted to inhibit, restrict or impair these valuable services of veterans organizations."

This policy on relationships with veterans organizations was not changed by the issuance of Executive Order 11491. Section 7(d)(2) of the Order, therefore, specifically provides that recognition of a labor organization does not preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veteran preference.

d. Agency relationships with professional associations and other organizations of employees may not infringe on the exclusive rights of labor organizations. Therefore, section 7(d)(3) of Executive Order 11491, as amended, contains certain limitations on agency relationships with these organizations. Section 7(d)(3) reads as follows:

"(d) Recognition of a labor organization does not --

"(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

e. Questions have existed since the issuance of Executive Order 11491 about the extent to which agencies may deal with professional and similar associations without violating their obligations to recognized labor organizations. Consequently, the Federal Labor Relations Council dealt with this problem in its report of June 1971, recommending amendments to the Executive Order. It stated:

"In some instances, agencies may be overly fearful of violating the rights of recognized labor organizations and unnecessarily refrain from proper dealings with professional associations on purely professional matters. To maintain such communications and to avoid further misunderstanding we recommend that 'professional' be explicitly included among the types of associations listed in section 7(d)(3) with which an agency may have limited

dealings not inconsistent with the rights of recognized labor organizations."

The purpose of this chapter is to provide to agencies additional guidelines for dealing with professional associations and other organizations within the limitations of section 7(d)(3) of the Order.

1-2. Relationships Generally Under Section 7(d)(3)

a. The restrictions of section 7(d)(3) on agency dealings with organizations apply only to dealings that concern matters relating to personnel policy or working conditions applicable to the agency's employees. Otherwise, an agency may consult or otherwise deal with any association or organization on matters related to its missions and programs or on matters of concern to the local community and the general public. This would apply to civic organizations, consumer groups, committees concerned with the problems of the aged, and so on. This would also apply to consultation with professional organizations on Federal programs -- for example, with the American Medical Association on national health insurance.

b. An agency may sponsor or support employee welfare, social, and recreational associations or other private associations in providing services that contribute to employee welfare and morale. Agency responsibilities and authority for the provision of employee services are described in FPM Chapter 790. Support for such organizations would usually be limited to use of Federal space and facilities and the use of agency mail service and bulletin boards to publicize their services to employees. It should be

noted, however, that the provision of employee services is negotiable under the labor-management relations program. Consequently, an agency would have to comply with its obligations to recognized labor organizations.

c. Except for professional associations, which are discussed in detail in paragraph 1-3, below, agencies would not have many occasions to deal with organizations covered by section 7(d)(3) on matters that involve individual members of the organizations or are of particular applicability to them or their members. For example, relationships with religious organizations would generally be limited to such things as discussing a liberal annual leave policy for religious holidays and adjusting work schedules to permit employees to attend weekly religious services.

d. Agencies may consult with groups representing minorities or women in connection with the agencies' EEO programs and action plans. Such organizations may also be selected by employees to represent them in discrimination complaints. However, exclusive unions have certain rights of negotiation or consultation in such matters that agencies must be careful to observe. These rights and other interrelationships between the Labor-Management Relations Program and the Equal Employment Opportunity Program are described in FPM Chapter 713.

1-3. Relationships with Professional Associations

a. For purposes of this chapter only, the term "professional association" is used in its broadest meaning to include nonprofit, cooperative, voluntary organizations of individuals having a common background in a professional, technical, or managerial field of work, requiring knowledge

and skills normally acquired only after extensive training or education.

Academic credentials, an accrediting examination, or a State license may be a prerequisite for membership. The term would not include organizations of employees whose work is, in the words of the Assistant Secretary of Labor for Labor-Management Relations, "routine mental, manual, mechanical or physical work" (Department of Interior, Bureau of Land Management, River-side District and Land Office A/SLMR No. 170). In addition to societies, fraternities, and associations in universally recognized professions such as law and medicine, the term "professional association" as used here would include any organizations whose main purposes include such things as "improving the state of the art"; developing "professional and ethical standards"; "exchange of ideas"; issuing technical publications; and furthering the career development of members. A professional association may include members of several professions or disciplines.

b. An agency's relations with professional associations may vary according to the degree of similarity between the agency's mission and goals and the purposes of a particular organization. In certain instances, where a professional association is organized around one agency's mission or an occupation peculiar to that agency, the relationship between the agency and the association may be very close and mutually beneficial. In a Federal research-and-development laboratory, for example, the goals of the laboratory may be very much like the goals of associations concerned with the specific scientific disciplines of the laboratory's personnel.

c. A professional association is a type of association with which an agency is likely to have relationships on matters outside of personnel policies, practices, and matters affecting working conditions

because the goals of the association are related to the agency's missions and programs (See paragraph 1-2a, above). In some cases, the relationship would extend to agency membership in the association. The association may cooperate with the agency in sponsoring research relating to the agency's programs or in acting as a sounding board for agency policy and legislative proposals. An agency may also grant privileges to an association when it determines that such action would be beneficial to the agency's programs or would be warranted as a service to employees who are members of the association. Examples of such privileges would be:

- (1) The use of agency messenger or mail service and agency bulletin boards for publicizing meetings; and
- (2) The use of agency facilities for meetings.

d. Encouraging employees' participation in activities of professional associations has many beneficial results. Through conferences, symposia, and committee assignments, employees expand their professional expertise; this would improve their performance on the job. Recognition from their peers through publication of journal articles and awards for professional achievement provide incentives for employees to achieve even greater excellence in job performance. Professional recognition of the competence of an agency's employees tends to increase public confidence in the agency's abilities to effectively carry out its programs. With these beneficial results in mind, agencies should encourage (but not require) employee membership and participation in professional associations by:

(1) Permitting employees, in appropriate cases, to use agency equipment or clerical services for preparing papers to be presented at professional conferences or symposia or published in professional journals;

(2) Using the authority under the Government Employees Training Act (Chapter 41 of title 5, U.S. Code) to pay expenses of employees to attend professional organization meetings when such attendance is for the purpose of employee development or directly concerned with agency functions or activities (See FPM Chapter 410 for details on the use of the training act for this purpose); and

(3) Following a liberal policy in authorizing administrative leave for other employees who could profit from a particular meeting and who are willing to pay their own expenses.

e. Dealings with professional associations on matters related to the employment and working conditions of members of the association are subject to the limitations spelled out in section 7(d)(3) of Executive Order 11491, as amended (See paragraph 1-1d., above). With these limitations in mind, an agency may:

(1) Informally obtain an association's views about matters or policies that involve members of the association individually or as a group; and

(2) Consider comments received from an association regarding matters and policies applicable to its members who are employees of the agency.

f. Several cases decided by the Assistant Secretary of Labor for Labor-Management Relations (A/SLMR) provide guidance to agencies in dealing with professional associations.

(1) Federal Aviation Administration, Atlanta ATC Tower (A/SLMR No. 300, August 15, 1973). This proceeding arose from an unfair labor-practice complaint by the Professional Air Traffic Controllers Organization (PATCO) against the Federal Aviation Administration (FAA). The complaint alleged that FAA had violated sections 19(a)(1) and (3) of Executive Order 11491, as amended, by allowing the distribution of literature of the Intervenor, the Air Traffic Control Association (ATCA). PATCO asserted that ATCA was a labor organization within the meaning of section 2(e) of Executive Order 11491, as amended.

The Assistant Secretary decided that the evidence did not show that FAA management had in fact distributed or permitted the distribution of ATCA bulletins. Furthermore, he found that ATCA was not a labor organization within the meaning of section 2(e) of the Executive Order but rather a professional organization.

ATCA, the Assistant Secretary noted, consulted with FAA on behalf of its members but this consultation did not assume the character of labor negotiations "rather, its consultations and dealings dealt with professional interests of its organization which might be affected by FAA policy

"I believe that the pertinent issue is not the amount of contact between a professional association and an agency or activity but, rather, the nature of their consultations and dealings. For a professional association to realize its full potential to its members, it is necessary for the association . . . to be free to engage in contact with the agency involved on a wide variety of subjects within the bounds of the association's interests and competence

"Thus the evidence indicates that none of the dealings between ATCA and the FAA took on the character of negotiations to seek binding agreements or commitments by the FAA and such dealings only incidentally touched on working conditions of its members. To put a more restrictive meaning on the consultations and dealings permitted a professional association under section 7(d)(3) would, in my view, render that section nugatory and be inconsistent with the intent of the Order as expressed in the Report and Recommendations of the Federal Labor Relations Council."

(2) Department of Transportation, Federal Aviation Administration, Kansas City Air Route Control Center, Olathe, Kansas (A/SLMR No. 353, February 5, 1974). The Professional Air Traffic Controllers Organization, Marine Engineers Beneficial Association, AFL-CIO (PATCO), filed a complaint against the Department of Transportation, Federal Aviation Administration, Kansas City Air Route Control Center, alleging that the Control Center had violated sections 19(a)(1), (3), and (5) of Executive Order 11491, as amended, by permitting the inclusion of an article by a supervisor about the Air Traffic Control Association, Inc. (ATCA), in the Center's employee newsletter. PATCO

contended that this article tended to encourage employees to join ATCA, that it therefore constituted assistance to a rival labor organization, and that it showed a refusal to accord to PATCO appropriate recognition as the exclusive representative of the controllers.

The Assistant Secretary agreed with the administrative law judge's conclusion that ATCA had not changed "its organization and operation" since Federal Aviation Administration, Atlanta ATC Tower (A/SLMR No. 300, August 15, 1973) in which the Assistant Secretary had found that ATCA was not a labor organization within the meaning of Executive Order 11491, as amended, but a professional organization. The Assistant Secretary adopted the administrative law judge's finding that "assuming, without deciding, that the publication of the ATCA article constituted encouragement of membership in ATCA, there is nothing in the Executive Order that prohibits the Activity from encouraging membership in a professional organization that is not also a labor organization. The fact that air traffic controllers are eligible for membership in both organizations does not make encouragement of membership in ATCA a violation of section 19(a)(3) which proscribes assistance to a labor organization, nor a refusal to accord appropriate recognition to the recognized labor organization in violation of section 19(a)(5). Such assistance to such an organization would be no more violative of the Executive Order than would be encouragement of membership in the Activity's recreational association (if it has one) in which controllers are eligible for membership because they are employees of the Activity."

(3) Veterans Administration Hospital, Salisbury, N.C. (A/SLMR No. 424, August 27, 1974). This case involved an unfair labor-practice complaint filed by the American Federation of Government Employees, Local 1738 (AFGE), the exclusive representative of certain professional employees, including nurses, of the Veterans Administration Hospital, Salisbury, N.C. In its complaint, AFGE alleged that the Hospital violated sections 19(a)(1) and (3) of Executive Order 11491, as amended, by granting some of its nurses administrative leave to attend a professional workshop conducted by the North Carolina State Nurses Association (NCSNA), a professional organization that functions as a labor organization at some hospitals (but not at Salisbury VA Hospital).

In his report, adopted by the Assistant Secretary, the administrative law judge said, "I find that the subject matter of the May 1973 workshop conference was of a professional and educational nature related to improvement of nursing care and practice and there were no dealings or consultations by the Respondent (Salisbury V.A. Hospital) with the NCSNA in conflict with the collective bargaining agreement." The evidence did not show that NCSNA had tried to recruit members at the workshop. Furthermore, the judge found, the Hospital's policy of granting professional employees administrative leave to attend educational conferences and meetings, regardless of their sponsors, was consistent both with its responsibility to maintain the efficiency of its operations and with its collective bargaining agreement with AFGE, which encouraged agency chiefs or supervisors to schedule employees' duty hours to take advantage of educational opportunities judged to be of career value.